

# C.C.R.B CASE CLOSING FORM

|  |                               |  |                            |   |
|--|-------------------------------|--|----------------------------|---|
| Investigator assigned:<br>Chanin   |                               | Team:<br>3                                       | CCRB#:<br>9701807          | <input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourtesy<br><input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury |
| Date of incident:<br>5/15/97   | Time of incident:<br>10:00 PM | Location of incident:<br>§ 87(2)(b)              | Pct. of occurrence:<br>106 | Date S.O.L. Expires:<br>11/15/98  |
| Date reported:<br>5/22/97  | Time reported:<br>1:29 PM     | To whom/where/how reported:<br>To Mullen at CCRB |                            |   |
| Complainant:<br>§ 87(2)(b)   |                               | Home address:<br>§ 87(2)(b)                      |                            |   |
| Victim(s):<br>§ 87(2)(b)   |                               | Home address:<br>§ 87(2)(b)                      |                            |   |
| Witness(es):   |                               | Home address:                                    |                            |   |
| Subject officer(s) (include rank):<br>Lt. Gary Messina<br>PO John Cappelman  |                               | Shield:<br>1324                                  | Tax:<br>874530<br>917376   | Command:<br>106<br>106  |
| Witness officer(s) (include rank):<br>Sgt. Steven Hines<br>PO Matthew Syska  |                               | Shield:<br>00826<br>14436                        | Tax:<br>897680<br>918376   | Command:<br>106<br>106  |
| Allegation(s) by letter:<br>A: PO Cappelmann used excessive force when arresting § 87(2)(b), in violation of PG 104-01, page 11.<br>B: Lt. Messina used discourteous language when he referred to § 87(2)(b) as "§ 87(2)(b)" in violation of PG-104-01, page 3.<br>C: Lt. Messina used discourteous language when he asked § 87(2)(b) if he had a problem understanding English, in violation of PG-104-01, page 3.<br>D: Lt. Messina abused his authority when he ordered the issuance of summonses to § 87(2)(b), in violation of PG-110-01. |                               |  |                            | Recommendation(s):<br>§ 87(2)(g)<br>§ 87(2)(g)<br>§ 87(2)(g)<br>§ 87(2)(g)  |

## Summary

§ 87(2)(b) was a member of the § 87(2)(b). He worked at § 87(2)(b) for thirteen years and was working the 1300-2200 shift, on 05-15-97. Every evening before punching out, he surveyed the outside of the school and set the alarm.

On 05-15-97, at 9:50 p.m., § 87(2)(b) exited the school building and went into the front yard. There he saw a group of twenty kids drinking beer. Shortly after he approached the group, a police car pulled up and the officers got out of the car.

The previous evening, Lt. Messina held a precinct community council meeting. At which time he was informed that kids were drinking in the schoolyard after dark. Based on this information, the officers went to § 87(2)(b), on this evening. Lt. Messina stated that they responded following a radio run but there is no evidence of such a report.

The police arrived and the individuals in the yard began dropping bottles. Lt. Messina saw § 87(2)(b) with a beer bottle in his hand, which he dropped to the ground when he saw the officers.

The officers instructed everyone to freeze and get up against the wall. The kids and § 87(2)(b) complied. Everyone was frisked. Those without identification were handcuffed and all the individuals were transported to the precinct.

§ 87(2)(b) gave PO Cappelmann his school identification. PO Cappelmann recalled that it was not clear that § 87(2)(b) was a § 87(2)(b) employee, but Lt. Messina stated that from the beginning it was clear that § 87(2)(b) was the § 87(2)(b).

At the precinct, § 87(2)(b) was issued a summons for being in the park after dark, and one for possession of alcohol. At the precinct, Lt. Messina filled out the summonses and PO Cappelmann signed them. PO Cappelmann did not see § 87(2)(b) with a bottle, but he issued the summonses based on the Lt.'s observations and orders. § 87(2)(b) was given the summonses and released.

The next day, Lt. Messina went to § 87(2)(b). He informed the school staff of what occurred the previous evening and of § 87(2)(b)'s involvement. Subsequent to this visit, § 87(2)(b) was let go from his position as § 87(2)(b).

There are no identified witnesses to this incident. § 87(2)(b) was not able to provide information about the kids who were arrested and he did not see anyone else there.

§ 87(2)(b) maintains that he was not drinking and that he was falsely arrested. He believes that Lt. Messina ordered his arrest despite knowing that he had not been drinking, and that he was the § 87(2)(b). He went to court twice for these summonses. Both times, the officers failed to appear and the summonses were dismissed. § 87(2)(b) is very disturbed about this incident, since this was certainly one of the factors leading to his termination. § 87(2)(b)

§ 87(2)(b) He believes that his boss wanted to terminate him, and this incident provided justification for it. § 87(2)(b) is appealing his termination, but as of now he has not been reinstated.

#### Analysis

**A: PO Cappelmann used excessive force when arresting § 87(2)(b), in violation of PG 104-01, page 11.**

In his initial interview, § 87(2)(b) stated that when he went to get his wallet PO Cappelmann threw him to the ground. In a later conversation, he stated that the officer pressed him up against the wall and did not mention being thrown to the ground.

When § 87(2)(b) described the incident, he stated that he complied with all of the officers' orders. § 87(2)(b) said he was thrown to the ground, but he did not claim that anything else happened while he was on the ground. He said he was not handcuffed and he did not complain that the officers pulled him up from the ground.

§ 87(2)(g)

§ 87(2)(g)

**B: Lt. Messina used discourteous language when he referred to § 87(2)(b) as § 87(2)(b), in violation of PG-104-01, page 3.**

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**C: Lt. Messina used discourteous language when he asked § 87(2)(b) if he had a problem understanding English, in violation of PG-104-01, page 3.**

§ 87(2)(b) alleged that during the course of the arrest Lt. Messina referred to him as: "§ 87(2)(b)." The officers denied using this term and there were no witnesses. § 87(2)(g)

§ 87(2)(b) also alleged that when the officers told everyone to get up against the wall, Lt.

Messina asked him: "Shut up! Do you have a problem understanding English?" Each time § 87(2)(b) described the incident he specifically recalled these two statements. He is insistent that the Lt. made them and that they were invoked in a derogatory tone. § 87(2)(g)

**D: Lt. Messina abused his authority when he ordered the issuance of summonses to § 87(2)(b), in violation of PG-110-01.**

§ 87(2)(b) believes that he was falsely arrested. He maintains that he was in the yard instructing the kids not to break the bottles and that he was not drinking. Additionally, he stated that he provided identification and that it was clear that he was the school janitor. Only Lt. Messina stated that he saw § 87(2)(b) with a beer bottle. § 87(2)(g)

§ 87(2)(b) PO Cappellmann did not recall receiving identification from § 87(2)(b) rather he believes § 87(2)(b) verbally informed him of his position at the § 87(2)(b) PO Cappellmann passed this information on to Lt. Messina. The Lieutenant instructed PO Cappellmann to proceed with the arrest despite this information. Lt. Messina stated that § 87(2)(b) provided identification in the § 87(2)(b) but he proceeded with the arrest because he believed § 87(2)(b) was drinking. In either case, Lt. Messina knew that § 87(2)(b) was the school janitor and arrested him despite that knowledge. PO Cappellmann implied that he did not see § 87(2)(b) do anything, and he proceeded because Lt. Messina instructed him to. The next day Lt. Messina went to § 87(2)(b) and reported the incident. Immediately following this report, § 87(2)(b) was terminated.

§ 87(2)(g)

II

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|---------------|-------------------------|-------|-----------------|
| Investigator: | <u>Rachel Chanin</u>    | Date: | <u>11-24-97</u> |
| Supervisor:   | <u>Cecelia Holloway</u> | Date: | <u>11/24/97</u> |
| Reviewed by:  | _____                   | Date: | _____           |
| Reviewed by:  | _____                   | Date: | _____           |